

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

CONNIE SUE McCONNELL,	)	CASE NO. 5:13CV1569
	)	
Plaintiff,	)	JUDGE JOHN R. ADAMS
	)	
v.	)	MAGISTRATE JUDGE
	)	KATHLEEN B. BURKE
COMMISSIONER OF	)	
SOCIAL SECURITY,	)	
	)	
Defendant.	)	<b><u>REPORT AND RECOMMENDATION</u></b>
	)	

This case is before the undersigned United States Magistrate Judge pursuant to an automatic referral under Local Rule 72.2(b). As discussed below, Plaintiff has failed to file her brief in this matter despite the Court's Order giving her additional time to do so, requiring her to file within the extended time, and warning her that her case might be dismissed for failure to prosecute. Accordingly, the undersigned **RECOMMENDS** that this case be dismissed without prejudice.

### I. Background

*Pro se* Plaintiff Connie Sue McConnell ("Plaintiff") filed a Complaint against the Commissioner of Social Security ("Defendant" or "Commissioner") on July 19, 2013. Doc. 1. On September 23, 2013, the Commissioner timely filed its Answer and the Transcript of Proceedings. Docs. 11 & 12. Pursuant to the Magistrate Judge's Initial Order and Local Rule 16.3.1 Plaintiff's Brief was to be filed within thirty (30) days of service of Defendant's Answer. Doc. 6. On March 10, 2014, this Court issued an order directing Plaintiff to file her brief on or before March 24, 2014. Doc. 13. Plaintiff was advised that failure to do so could result in dismissal for want of prosecution. Id.

## II. Discussion

Both [Rule 16\(f\)\(1\)\(C\) and 41\(b\) of the Federal Rules of Civil Procedure](#) authorize this Court to dismiss an action where a party fails to comply with a court order. [Fed. R. Civ. P. 41\(b\)](#) also authorizes dismissal for failure to prosecute. [Fed.R.Civ.P. 16\(f\)\(1\)\(C\)](#) provides:

### (f) Sanctions.

**(1) In General.** On Motion on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2) (A)(ii)-(vii), if a party or its attorney:  
...

(C) fails to obey a scheduling or other pretrial order.

[Fed.R.Civ.P. 41\(b\)](#) provides:

**(b) Involuntary Dismissal; Effect.** If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) ... operates as an adjudication on the merits.

Although [Fed.R.Civ.P. 41\(b\)](#) references motions by defendants; the Sixth Circuit recognizes the power of the district court to enter a *sua sponte* order of dismissal under 41(b). [Jourdan v. Jabe, 951 F.2d 108, 109 \(6th Cir. 1991\)](#) (*citing Link v. Wabash R.R., 370 U.S. 626, 630, 82 S.Ct. 1386, 1388, 8 L.Ed.2d 734* (1962); [Carter v. Memphis, 636 F.2d 159, 161 \(6th Cir.1980\)](#)). *Pro se* plaintiffs are held to less stringent standards than attorneys, however, cases filed by *pro se* plaintiffs may still be subject to dismissal if the plaintiff fails to meet court orders. *See Jourdan, 951 F.2d at 110* (finding that *pro se* litigants are not to be accorded with any special consideration when they fail to adhere to readily-comprehended court deadlines).

In this case, the Initial Order advised Plaintiff that her brief was to be filed in accordance with Local Rule 16.3.1. Local Rule 16.3.1 provides that, “The plaintiff shall file a brief, and

serve it upon defendant within thirty (30) days of service of defendant's answer." On September 23, 2013, Defendant filed its Answer electronically with this Court and certified that a copy of the Answer and transcript were served upon Plaintiff via U.S. Mail that same day. Doc. 11, p. 4. Plaintiff should have filed her brief within thirty (30) days of service of that answer. On March 10, 2014, having not received Plaintiff's Brief, this Court issued an order directing Plaintiff to file her brief on or before March 24, 2014. Doc. 13. Plaintiff was advised that failure to do so could result in dismissal for want of prosecution. Id. To date, Plaintiff has not filed her brief. Accordingly, the undersigned **RECOMMENDS** that this case be dismissed without prejudice for failure to comply with this Court's orders and for failure to prosecute.

IT IS SO ORDERED.

Dated: April 1, 2014



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Kathleen B. Burke  
United States Magistrate Judge

### OBJECTIONS

Any objections to this Report and Recommendation must be filed with the Clerk of Courts within fourteen (14) days after the party objecting has been served with a copy of this Report and Recommendation. Failure to file objections within the specified time may waive the right to appeal the District Court's order. See [United States v. Walters, 638 F.2d 947 \(6th Cir. 1981\)](#). See also [Thomas v. Arn, 474 U.S. 140 \(1985\), reh'g denied, 474 U.S. 1111 \(1986\)](#).